

## 48A C.J.S. Judges § 237

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### B. Waiver of Disqualification

##### 1. In General

## § 237. Grounds for disqualification under which waiver may be allowed

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  52, 53

**Except where precluded by a mandatory constitutional or statutory provision, there may be a waiver of the right to disqualify a judge because of interest, relationship, or bias or prejudice.**

Generally, an objection to a judge because of interest may be waived where the disqualification because of interest is considered a matter of privilege and as not rendering the acts of the judge void<sup>1</sup> or where a statute permits a waiver in such a case.<sup>2</sup> However, where a disqualification is founded in public policy or on an absolute constitutional or statutory prohibition, or where the disqualification renders the acts of the disqualified judge absolutely void, disqualification on account of interest cannot be waived.<sup>3</sup>

Waiver of the right to have a judge disqualified may also be permitted where the basis for the disqualification is the relationship of the judge,<sup>4</sup> his or her bias or prejudice,<sup>5</sup> or his or her having previously acted as counsel for a party to an action.<sup>6</sup> However, there is authority that the disqualification of a judge because of a relationship cannot be waived where such is precluded by mandatory language in a statute or in a constitutional provision even with the consent of the parties.<sup>7</sup> Furthermore, according to some authorities, the disqualification of a judge for actual bias may not be waived<sup>8</sup> although litigants may waive disqualification when the disqualification is not for reasons of actual bias or prejudice.<sup>9</sup>

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### Footnotes

1 Ga.—*Kramer v. State Highway Dept.*, 106 Ga. App. 706, 128 S.E.2d 86 (1962).

2 U.S.—*Adams v. U.S.*, 302 F.2d 307 (5th Cir. 1962).

As to interest as ground for disqualification, see §§ 275 to 288.

3 U.S.—*State of Cal. v. Kleppe*, 431 F. Supp. 1344 (C.D. Cal. 1977).

**Financial interest**

U.S.—*Shell Oil Co. v. U.S.*, 672 F.3d 1283 (Fed. Cir. 2012).

4 Miss.—*Ratcliff v. State*, 126 So. 3d 118 (Miss. Ct. App. 2013).

As to relationship of judge as ground for disqualification, see §§ 289 to 297.

5 U.S.—*Hall v. Burkett*, 391 F. Supp. 237 (W.D. Okla. 1975).

As to bias or prejudice as ground for disqualification, see §§ 247 to 259.

6 Ind.—*State ex rel. Citizens Nat. Bank v. Superior Court of Madison County*, 236 Ind. 135, 138 N.E.2d 900 (1956).

As to previously having acted as counsel as ground for disqualification, see §§ 267 to 271.

7 Tex.—*Fry v. Tucker*, 146 Tex. 18, 202 S.W.2d 218 (1947).

As to consent, see §§ 243, 244.

8 Colo.—*Rea v. Corrections Corp. of America*, 2012 COA 11, 272 P.3d 1143 (Colo. App. 2012).

9 Colo.—*People ex rel. A.G.*, 262 P.3d 646 (Colo. 2011).